Ismail bin Ibrahim & Anor v Public Prosecutor

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COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NOS B-05–456 OF 2010 AND B-05–457 OF 2010
CLEMENT SKINNER, APANDI ALI AND MOHTARUDIN BAKI JJCA
28 DECEMBER 2012

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Criminal Procedure — Appeal — Appeal against conviction and sentence — Offence under s 39B(1)(a) of the Dangerous Drugs Act 1952 — Death sentence — Drugs weighing 20,052g found in motorcar boot — Whether possession of drugs proven — Motorcar owner not called as witness — Whether there was proper evaluation of defence story

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Evidence — Adverse inference — Failure to call witness — Drugs weighing 20,052g found in motorcar boot — Motorcar belonging to someone else — Motorcar owner not called as witness — Whether motorcar owner material witness — Whether adverse inference could be invoked — Evidence Act 1950 s 114(g)

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Acting upon information received that a drug transaction would take place, a police party led by PW4 laid an ambush plan. After a short wait at the suspected venue, a motorcar stopped by the road curb and two persons ('the appellants') were seen alighting from it, walking towards the motorcar boot. At this juncture, the police sprung into action and arrested the appellants. Upon examination of the motorcar boot, two boxes containing 10 slabs of dried leaves in each box were found. A chemist report later confirmed the 20 slabs to be cannabis, weighing 20,052g. The appellants were convicted and sentenced to death for an offence under s 39B(1)(a) of the Dangerous Drugs Act 1952 ('DDA'). Both appellants appealed against their convictions and sentences on the contentions that: there was no evidence to show that both appellants had possession of the drugs in the motorcar; that the motorcar was registered under the name of one Ismail bin Banta and the latter was not called as a witness; and that there was no proper evaluation of the defence story, namely that the appellants were dragged out of the motorcar after the left window was smashed by the police, at the time of arrest.

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Held, dismissing the appeals and affirming the convictions and sentences of court below:

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(1) The High Court was correct in arriving at its findings, at the end of the prosecution case, that the prosecution had established a prima facie case and in calling the appellants to enter on their defence. Despite having found all 20 slabs of cannabis in materials that can retain fingerprints, the

negative result of the attempt to trace the fingerprints of the appellants did not in any way weaken the prosecution's case. This was so as the identity of both appellants, who were caught with the offending slabs, were not in doubt (see para 11(b)).

(2) The non-calling of the registered owner of the motorcar did not, in any way, create any gap in the prosecution case as both the appellants were caught after an observation by the police prior to their arrest. The registered owner of the motorcar was not an essential witness for the unfolding of the narrative on which the prosecution case was based (see para 12).

(3) The non-calling of the registered owner of the motorcar, Ismail bin Banta, on the facts of the case, could not have attracted the adverse inference under s 114(g) of the Evidence Act 1950. There was no evidence to show that there was any withholding or suppression of the witness by the prosecution. However, there was evidence by the investigating officer that numerous efforts had been made to trace the witness, but of no avail. In any event, this particular witness was not a material witness (see para 14).

(4) The defence was properly and adequately considered by the learned trial Judge, who correctly came to the conclusion that the appellants failed to cast any reasonable doubt on the prosecution case (see para 17(c)).

[Bahasa Malaysia summary

Bertindak berdasarkan maklumat yang diterima bahawa transaksi akan terjadi, sepasukan polis yang diketuai oleh PW4 telah merancangkan serbuan. Selepas menunggu seketika di tempat yang dijangkakan, sebuah kereta telah berhenti di tepi jalan dan dua orang ('perayu-perayu') dilihat keluar daripadanya, berjalan menuju but kereta. Pada ketika ini, polis bertindak dan menahan perayu-perayu. Setelah memeriksa but kereta, dua kotak yang mengandungi 10 papak daun kering dalam setiap kotak yang ditemui. Ahli kimia kemudian mengesahkan 20 papak tersebut adalah kanabis, dengan berat 20,052g. Perayu-perayu telah disabit dan dihukum mati untuk kesalahan di bawah s 39B(1)(a) Akta Dadah Berbahaya 1952 ('ADB'). Kedua-dua perayu merayu terhadap sabitan dan hukuman mereka dengan hujahan bahawa; tiada keterangan menunjukkan bahawa kedua-dua perayu mempunyai milikan terhadap dadah di dalam kereta itu; bahawa kereta tersebut didaftarkan di bawah nama Ismail bin Banta dan dia tidak dipanggil sebagai saksi; dan bahawa tidak terdapat penilaian yang wajar terhadap cerita pihak pembelaan, iaitu bahawa perayu-perayu telah diheret keluar daripada kereta selepas tingkap kiri dipecahkan oleh polis, semasa ditangkap.

Diputuskan, menolak rayuan-rayuan dan mengesahkan sabitan dan hukuman mahkamah bawahan:

(1) Mahkamah Tinggi adalah betul dalam memutuskan dapatannya, pada akhir kes pembelaan, bahawa pihak pendakwaan telah membuktikan kes prima facie dan mengarahkan perayu-perayu untuk memasukkan pembelaan mereka. Meskipun setelah mendapati kesemua 20 papak kanabis pada bahan-bahan di mana cap jari boleh dikesan, keputusan negatif dalam cubaan untuk mengesan cap jari perayu-perayu tidak sama sekali melemahkan kes pihak pendakwaan. Ini adalah kerana identiti kedua-kedua perayu, yang mana ditangkap dengan papak tersebut tidak diragui (lihat perenggan 17(b)).

(2) Dengan tidak memanggil pemilik berdaftar kereta tersebut tidak sama sekali mewujudkan sebarang kelemahan dalam kes pihak pendakwaan memandangkan perayu-perayu telah ditangkap selepas diperhatikan oleh polis sebelum mereka ditahan. Pemilik berdaftar kereta tersebut bukanlah saksi yang penting untuk mendedahkan naratif yang disandarkan oleh kes pendakwaan (lihat perenggan 12).

(3) Dengan tidak memanggil pemilik berdaftar kereta tersebut, Ismail bin Banta, berdasarkan fakta kes, tidak menarik tanggapan bertentangan di bawah s 114(g) Akta Keterangan 1950. Tiada keterangan menunjukkan bahawa terdapat saksi yang ditahan atau ditindas oleh pihak pendakwaan. Walau bagaimanapun, terdapat keterangan oleh pegawai siasatan bahawa pelbagai usaha telah dilakukan untuk menjejak saksi, akan tetapi ianya tidak berjaya. Dalam apa-apa kejadian, saksi ini bukanlah saksi yang penting (lihat perenggan 14).

(4) Pembelaan telah dipertimbangkan dengan wajar dan berpatutan oleh hakim bicara yang bijaksana, yang mana dengan betul telah membuat kesimpulan bahawa perayu-perayu telah gagal untuk menimbulkan keraguan yang munasabah terhadap kes pihak pendakwaan (lihat perenggan 17(c)).]

Notes

For cases on appeal against conviction and sentence, see 5(1) *Mallal's Digest* (4th Ed, 2012 Reissue) paras 216–222.

For cases on failure to call witness, see 7(1) *Mallal's Digest* (4th Ed, 2011 Reissue) paras 232–260.

Cases referred to

Che Omar bin Mohd Akhir v PP [2007] 4 MLJ 309; [2007] 3 CLJ 281, FC (refd)

Gunalan a/l Ramachandran & Ors v PP [2004] 4 MLJ 489, CA (refd)

Lim Kheak Teong v PP [1985] 1 MLJ 38, FC (refd)

Nanda Kumar Kunyikanan & Anor v PP [2011] 8 CLJ 406, CA (refd)

A *PP v Lim Eng Chye* [1978] 1 MLJ 200, FC (refd)
PP v Munusamy [1980] 2 MLJ 133, FC (refd)
PP v Wan Razali Kassim [1970] 2 MLJ 79, FC (refd)
R v Teo Ah Soon [1894] 2 SSLR 82 (refd)
Ti Chuee Hiang v PP [1995] 2 MLJ 433; [1995] 3 CLJ 1, SC (refd)

B **Legislation referred to**

Dangerous Drugs Act 1952 s 39B(1)(a)
Evidence Act 1950 s 114(g)

C **Appeal from:** Criminal Trial No 45–25 of 2003 (High Court, Shah Alam)

Mak Kah Keong (Gooi & Azura) for the appellants.
Tengku Amir Zaki bin Tengku Abdul Rahman (Deputy Public Prosecutor, Attorney General's Chambers) for the respondent.

D **Apandi Ali JCA (delivering judgment of the court):**

INTRODUCTION

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[1] The appellants were convicted and sentenced to death for an offence under s 39B(1)(a) of the Dangerous Drugs Act 1952.

F **[2]** The charge against the appellants at the High Court reads as follows:

> Bahawa kamu bersama-sama pada 21 Mei 2002, jam lebih kurang 1.30 petang di Plaza Tol Gombak, Lebuhraya Kuala Lumpur-Karak, di dalam daerah Gombak, di dalam Negeri Selangor Darul Ehsan, dengan niat bersama telah didapati mengedar dadah berbahaya sejumlah berat 20,052 gram Cannabis dan oleh yang demikian, kamu telah melakukan suatu kesalahan di bawah Seksyen 39B(1)(a) Akta Dadah Berbahaya 1952 dan boleh dihukum di bawah Seksyen 39B(2) Akta yang sama dan dibaca bersama Seksyen 34 Kanun Keseksaan.

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H **[3]** Both the appellants appealed against their convictions and sentences. On appeal, this court dismissed the appeal and affirmed the convictions and sentences imposed by the High Court.

I **[4]** The facts of the case are well set out in the judgment of the High Court and we do not propose repeat them here. However, in order to appreciate the issues, the salient facts are very simple: Acting of information receive on 21 May 2002, a police party led by PW4, C/Insp Basar laid in ambush at the toll plaza in Gombak. The police waited at a distance of about 200 meters from the toll, in the direction of Karak. After a short wait, they saw a motorcar WDX

2562 stopping along the road curb. They saw two persons in the said motorcar and both of them alighted from the motorcar and went toward the boot of the motorcar. The driver opened the boot, while the passenger stood next to him. The police moved in and arrested them. Upon examination of the boot of the motorcar the police found two boxes containing ten slabs of dried leaves in each box. Search list were issued ie exhs P19 and P20. The 20 slabs were later confirmed by the chemist to be cannabis, with a total weight of 20,052g.

[5] From the salient facts of the case, all the legal issues arising therein are trite law. However we shall deal with the contentions raised by the appellants at the hearing of their appeals.

CONTENTION BY THE APPELLANTS

[6] Both the appellants were represented by one counsel. Basically learned counsel raised three contentions:

(a) that there was no evidence to show that both the appellants had possession of the drugs in the motorcar;

(b) that the motorcar WDX 2562 was registered under the name of one, Ismail bin Banta and this registered owner was not called as a witness; and

(c) that there was no proper evaluation of the defence story, namely that the appellants were dragged out of the motorcar after the left window was smashed by the police, at the time of arrest.

[7] Upon perusal of the grounds of judgment of the learned trial, we find that all of the above contentions has been dealt with by the judge.

[8] On the first contention, on 'possession' the learned trial judge wrote:

> Di dalam kes sekarang, berdasarkan keterangan saksi pendakwaan (SP4), kedua-dua Tertuduh dilihat keluar dari kereta WDX 2562 tersebut dan bergerak ke arah boot. Tertuduh kedua dilihat membuka boot kereta tersebut dan dilihat membuka sebuah kotak di dalam boot tersebut. Apabila diserbu, Tertuduh pertama telah cuba melarikan diri sehingga berlaku pergelutan sebelum ditangkap. Setiap dua kotak di dalam boot tersebut di mana salah satunya telah sedia terbuka didapati mengandungi 10 ketulan mampat bersalut plastik lut sinar yang terbukti sebagai 'cannabis'. Hujah peguam bahawa adalah mustahil bagi SP4 dan (SP5) dapat melihat kotak-kotak di dalam boot kereta WDX 2562 tersebut dari kedudukan mereka yang lebih rendah dari jarak jauh kedua mereka di dalam kereta di mana mereka ini buat pemerhatian dan terlindung oleh kedua-dua Tertuduh yang berdiri di situ, pada pandangan mahkamah ini, selain daripada ia telah dijelaskan oleh SP4 dan SP5 bahawa mereka masih dapat melihat, tidak mengubah fakta bahawa

A kedua-dua kotak tersebut terdapat di dalam boot kereta tersebut, semasa mereka berdua ditangkap sedang memeriksanya. Oleh itu, tiada alasan untuk meragui 'reliability and credibility' saksi-saksi ini.

Fakta Tertuduh pertama cuba melarikan diri dan bergelut sebelum ditangkap adalah relevant di bawah s 8 Akta Keterangan (lihat *Parlan Dadeh v Public Prosecutor* [2008] 6 MLJ 19.

[9] In the course of the submissions, on this issue, it was argued that it was not possible for the police, namely PW4 and PW5 to see what was in the boot of the motorcar WDX 2562, even when the boot was opened. It is in evidence that the police were only about five meters away from motorcar WDX 2562, prior to the arrest of the appellants. The police were waiting in a motorcar behind the appellant's motorcar.

[10] It is our observation that by looking at the photograph of the boot of the said motorcar (in exh P3F) it is clear that when the boot is opened the interior of the boot can be seen, as the boot opens up right down to the rear bumper. On this point, PW4 in his evidence has this to say:

> Saya tak setuju dengan peguam yang saya tak nampak apa yang kedua-dua Tertuduh lakukan kepada kotak di dalam boot kereta mereka kerana penglihatan saya terlindung dengan kedua-dua Tertuduh yang berdiri dekat nombor plate belakangnya dan tempat duduk saya di dalam Proton yang saya naiki agak mendap ke bawah *kerana kedua-dua kotak di dalam boot kereta Tertuduh tersebut adalah lebih tinggi dari paras kedalaman atau ketinggian boot kereta mereka.*

[11] On the second contention, on the non-calling of the registered owner of motorcar WDX 2562, the learned trial judge wrote in his judgment, as follows:

> Ketiadaan tuan punya berdaftar kereta WDX 2562 iaitu Ismail Bin Banta dipanggil sebagai saksi selain dari ketidakdapatkesannya telah dijelaskan oleh SP6, mahkamah bersetuju berdasarkan fakta khusus kes ini bahawa ia tidaklah menjejaskan kes pendakwaan ke atas unsur 'custody and control' kedua-dua Tertuduh ke atas cannabis berkenaan *memandangkan dadah tersebut bukanlah dijumpai daripada apa-apa 'specially constructed compartment'* tetapi di dalam boot ketika kedua-dua Tertuduh sedang memeriksanya. 'Inferences' bahawa kedua-dua Tertuduh sedang memeriksa kotak-kotak tersebut memandangkan mahkamah ini tidak nampak sebab lain tujuan mereka memberhentikan kereta di situ selain daripada tujuan mereka untuk memeriksanya apabila mereka berjaian ke arah boot kereta dan membukanya.
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> Tambahan pula adalah jelas bahawa kedua-dua Tertuduh telah bergerak membawa cannabis tersebut *dari satu tempat sebelum sampai ke tempat mereka ditangkap* (lihat *Public Prosecutor v Karim Abd Jabar* [2008] 5 CLJ 173).

[12] On this contention, it is our judgment that the non-calling of the

registered owner of the motorcar, did not in any way create any gap in the prosecution's case. This is so as both appellants were caught after an observation by the police prior to their arrest. The registered owner of the motorcar is not an essential witness for 'the unfolding of the narrative on which the prosecution case is based'; see *Ti Chuee Hiang v Public Prosecutor* [1995] 2 MLJ 433; [1995] 3 CLJ 1.

[13] While on this issue, it is our observation and judgment learned defence counsel at the trial of this case in the High Court had erred in his cross-examination of PW5, Sub Insp Zulkarnain, who was a member of the police ambush party, namely on the actual information received by the police before the ambush. The answers given by PW5 were damaging to both the appellants but, in law, were admissible, as they were made pursuant to questions posed by learned defence counsel. With due respect, such questions should not have been asked during cross-examination. To appreciate, what we are saying, it is pertinent to refer to that particular part of the damming evidence against the appellants. The relevant part of PW5's evidence that was given during the particular cross-examination (at p 113 of the appeal records) reads as follows:

S : Apakah kandungan taklimat tersebut.

J : Beliau mentaklimatkan bahawa satu aktiviti pengedaran dadah akan berlaku di suatu kawasan di Gombak.

S : Adakah beliau memaklumkan mengenai jenis dadah, nombor kenderaan dan bangsa suspek.

J : Ya ada, ASP Leong mengatakan bangsa suspek ialah Melayu dan jenis dadah ialah ganja dan ia melibatkan kereta.

S : Ada dimaklumkan jenis dan nombor kereta.

J : Ya, ada iaitu kereta Wira berwarna putih dan No. WDX 2562.

[14] It is also our judgment that the non-calling of the registered owner of motorcar WDX 2562, Ismail bin Banta, on the facts of this case, could not have attracted the adverse inference under s 114(g) of the Evidence Act 1950. This is so, since these is no evidence to show that there was any withholding or suppression of the witness by the prosecution. On the other hand there are evidence by the investigating officer that numerous efforts has been made to trace the witness, but of no avail. In any event, as we have stated earlier, this particular witness was not a material witness. See *Nanda Kumar Kunyikanan & Anor v PP* [2011] 8 CLJ 406.

[15] The third contention canvassed by learned counsel for the appellants was on the failure to fully appreciate the defence story. Before we deal with this

last contention, it will be appropriate to see how the learned trial judge had evaluated the defence evidence, which reads as follows:

> 31. Bagi pihak Tertuduh Pertama dan Tertuduh Kedua, masing-masing peguam yang bijaksana meminta mahkamah meneliti kereta WDX 2562 di dalam gambar exh P3(E) yang menunjukkan pintu kiri hadapan tidak menunjukkan *refleksi cahaya* daripada cermin sebagai bermakna ia telah pecah. Kepecahan cermin ini lebih jelas bila cermin yang sama pada kereta (exh P30) yang dikemukakan dan dilihat oleh mahkamah dalam masa perbicaraan sememangnya telah tiada. Ini, menurut peguam mengesahkan cerita Tertuduh-Tertuduh bahawa pihak polis telah memecahkan cermin pintu kiri kereta tersebut dan memaksa mereka keluar sebelum menangkapnya. Secara alternatifnya peguam berhujah bahawa kereta yang dilihat di dalam gambar P3E tersebut sebenarnya adalah kereta Proton Wira Putih lain yang telah ditukar 'number plate'nya kepada WDX 2562 sebelum gambar diambil.
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> 32. Untuk hujah-hujah ini, *pertamanya*, mahkamah tidak nampak berdasarkan gambar P3E (asal), bagaimana cermin pintu hadapan kiri kereta tersebut dikatakan tiada refleksi cahaya dan oleh itu ia menunjukkan cermin tersebut telah pecah. *Keduanya*, selain daripada keterangan SP4, SP5 yang mengatakan kedua-dua Tertuduh ditangkap semasa mereka di belakang boot kereta dan tiada cermin pintu kereta dipecahkan serta keterangan SP6 bahawa cermin tersebut tidak pecah semasa diterima daripada SP4, mahkamah ini tidak nampak sebab yang munasabah mengapa cermin tersebut perlu dipecahkan untuk memaksa Tertuduh Pertama keluar, jika benar seperti didakwa Tertuduh-Tertuduh bahawa beberapa anggota yang bersenjata daripada motorvan dan kereta Proton di belakangnya telah 'mengepung' kereta mereka. *Ketiganya*, daripada pengalaman mahkamah ini melihat secara fizikal kereta-kereta yang dikemukakan di mahkamah untuk maksud perbicaraan apa jua kes, setelah ditahan di perkarangan Balai Polis sebegitu lama (dalam kes ini semenjak 2002), adalah didapati bukan sesuatu yang luar biasa bila keadaan kereta tersebut terlalu berbeza dari keadaan ia mula ditahan berdasarkan gambar-gambarnya yang diambil ketika itu. Di dalam kes ini semasa kereta (exh P30) tersebut dibuat pada 31.3.2008 di perkarangan Balai Polis Seksyen 6, Shah Alam, adalah didapati selain dari 'sand printed nombor' WDX 2562 di atas cermin belakangnya dan lever pembuka bootnya yang masih berfungsi, kereta tersebut tidak mempunyai kedua-dua rim tayar hadapan, tiada tayar kecuali di sebelah kanan belakang, tiada 'locking system' untuk boot, tiada speedometer, tempat duduk belakang dan hadapan yang telah koyak dan bukan sahaja cermin pintu kirinya pecah *tetapi iuga cermin pintu di sebelahnya kanannya*.
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> 33. Seterusnya dihujahkan bahawa versi pembelaan tentang bagaimana mereka ditahan tersebut mestilah diterima oleh mahkamah memandangkan SP4 membuat beberapa pindaan kepada report polis beliau (exh P17). Untuk ini, mahkamah selain daripada telah menerima alasan mengapa SP4 membuat pindaan dengan pen yang untuk ayat 'Saya telah memberikan amaran di bawah Seksyen 37(1)(b) Akta Dadah

berbahaya 1952' tersebut, bahagian pindaan ayat bertaip yang dibuat secara 'contemporaneous' tersebut iaitu ayat 'sambil membuka kotak di dalam boot' mestilah dilihat dalam konteks ayat sebelumnya iaitu 'kereta Proton Wira warna putih no. pendaftaran WDX 2562 *yang sedang berhenti di tepi jalan sebelah kiri berhampiran Plaza Tol Gombak* Lebuh raya Kuala Lumpur-Karak. Saya lihat *dua lelaki yang sedang berdiri di belakang bonet kenderaan tersebut'*. dan juga di dalam konteks keterangan lisan SP4 dan SP5 yang menyebutkan perkara yang sama dan bukannya secara seperti yang didakwa Tertuduh.

34. Oleh itu, dakwaan pembelaan tentang cara dan tempat kedua-dua Tertuduh walaupun telah dibangkitkan dalam masa kes pendakwaan, pada pandangan mahkamah ini tidak mencabar 'credibility and reliability' saksi-saksi SP4 dan SP5.

[16] It seems that a lot of effort, has been made by learned counsel at the trial, to capitalise on the condition of the motorcar, in particular the missing window on the left front passenger side, so that it tallied with the defence story. It was even alleged that the police with evil intentions had placed the registration plate on a different motorcar for purposes of the photo shoot of the motorcar. It is our observation and judgment that all that submissions of the smashed left front window of the motorcar and the evil intention by the police is nothing but a concocted story. This is so because, if one were to closely look at the photograph, in exh P3E, namely at the left front window, one will see the *reflection of the side-mirror* on the glass of that window! The photograph was taken by PW1, D/Cpl Mohamad Sani, the police photographer from Balai Polis Rawang, on 21 May 2002; ie one day after the ambush at Toll Plaza Gombak. In the absence of any allegation of tampering that photograph can tell no lie. It is noted that from the appeal records the motorcar, exh P30 was viewed by the court together with all parties to the trial at Balai Polis Seksyen 6, Shah Alam on 7 July 2008 (ie six years after the photograph P3E was taken). That photograph negates and demolishes the defence story.

CONCLUSION

[17] Having examined the evidence as in the appeal records and upon hearing the respective submissions, we hold that:

(a) all the contentions canvassed by learned counsel for the appellant are centred around issues related to findings of fact by the learned trial judge. It is trite law that we, as the appellate court, will be slow to interfere with findings of facts unless it is against the weight of available evidence. This concept has evolved from an imperative position of not to disturb as first pronounced more than 100 years ago by Cox CJ in *R v Teo Ah Soon* [1894] 2 SSLR 82, to a much watered-down concept, of 'slow to

A interfere' as can be seen, over the years, in the following Federal Court cases:

(i) *Public Prosecutor v Wan Razali Kassim* [1970] 2 MLJ 79;

(ii) *Public Prosecutor v Lim Eng Chye* [1978] 1 MLJ 200;

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(iii) *Public Prosecutor v Munusamy* [1980] 2 MLJ 133;

(iv) *Lim Kheak Teong v Public Prosecutor* [1985] 1 MLJ 38; and

(v) *Che Omar bin Mohd Akhir v Public Prosecutor* [2007] 4 MLJ 309; [2007] 3 CLJ 281.

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(b) the High Court was correct in arriving at its findings, at the end of the prosecution's case, that the prosecution had established a prima facie case and in calling the appellants to enter on their defence. On this conclusion, we would add that despite all the 20 slabs of cannabis were

D found wrapped in materials that can retain fingerprints, the negative result of the attempt to trace the fingerprints of the appellants on them by PW7, Supt Shaikh Abdul Adzis, did not in any way weaken the prosecution's case. This is so as the identity of both appellants, who were caught with the offending slabs were not in doubt. See *Gunalan a/l Ramachandran & Ors v Public Prosecutor* [2004] 4 MLJ 489; and

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(c) the defence was properly and adequately considered by the learned trial judge, who correctly came to the conclusion that the appellants failed to cast any reasonable doubt on the prosecution's case.

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[18] In that light we find that the trial court had come to a correct conclusion and thus we find no reason to disturb the decision and we also conclude that the conviction is obviously safe.

G **[19]** For the above reasons, we unanimously dismissed the appeals by the appellants and accordingly the convictions and sentences by the High Court are therefore affirmed.

Appeals dismissed and convictions and sentences of court below affirmed.

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Reported by Afiq Mohamad Noor

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